WAS 463-XX-XXX Impact and Mitigation Standards for Wetlands

(1) Introduction.

This rule establishes an Impact and Mitigation standard for Wetlands associated with the siting of gas power plants under the jurisdiction of the Energy Facility Site Evaluation Council (EFSEC). The rule addresses designation, rating and mapping of wetlands, wetland functional assessment, and wetland compensation and mitigation ratios.

(2) Policy.

Wetland impacts should be avoided wherever possible. Where impacts can not be avoided, mitigation and offset of wetland impacts is required consistent with RCW 80.50., this Chapter, 463-XX-XXX, and in particular, the wetland mitigation standards set forth below. To the extent that additional guidance is necessary, EFSEC shall in the exercise of its discretion consult with and be guided by such Federal, state and local agencies as are appropriate.

(3) Designation, rating and mapping wetlands

a. Designating wetlands. Wetlands are those areas, designated in accordance with the *Washington State Wetland Identification and Delineation Manual*, that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation adapted for life in saturated soil conditions. All areas meeting the wetland designation criteria in the *Identification and Delineation Manual*, regardless of any prior mapping or other formal identification and delineation, are hereby designated critical areas and are subject to the provisions of this Title, except those artificial wetlands intentionally created from non-wetland sites, including, but not limited to, irrigation and drainage ditches, grass-lined swales, canals, detention facilities, wastewater treatment facilities,

farm ponds, and landscape amenities, or those wetlands created after July 1, 1990, that were unintentionally created as a result of the construction of a road, street, or highway. Wetlands include those artificial wetlands intentionally created from non-wetland areas to mitigate the conversion of wetlands. Wetland delineations conducted by a qualified professional are considered valid for five years.

b. Wetland ratings. Wetlands shall be rated according to the Department of Ecology wetland rating system found in the Washington State Wetland Rating System documents (Western Washington, *Ecology Publication #93-74*, Eastern Washington, *Ecology Publication #91-58*) or as revised by Ecology. These documents contain the criteria, definitions and methods for determining if the criteria below are met.

    i. Wetland rating categories

        1. Category I wetlands are those that

            a. represent a rare wetland type;

            b. are highly sensitive to disturbance;

            c. are relatively undisturbed and contain ecological attributes that are impossible to replace within a human lifetime;

            d. provide a very high level of functions; or are designated as high value wetlands of local significance.

        2. Category II wetlands are those that

            a. are sensitive to disturbance,

            b. are difficult to replicate,

c. wetlands with a moderately high level of functions or are designated as wetlands of local significance. These wetlands are difficult, though not impossible, to replace, and provide high levels of some functions. These wetlands occur more commonly than Category I wetlands, but still need a high level of protection.

3. Category III wetlands are wetlands with a moderate level of functions. These wetlands generally have been altered in some ways, or are smaller, less diverse and/or more isolated in the landscape than Category II wetlands.

4. Category IV wetlands have the lowest levels of functions, and are often heavily altered. These are wetlands that we should be able to replace, and in some cases be able to improve. These wetlands do provide some important functions, and should to some degree be protected.

c. Date of wetland rating. Wetland rating categories shall be applied as the wetland exists on the date of adoption of the rating system by the local government with jurisdiction over the site, as the wetland naturally changes thereafter, or as the wetland changes in accordance with permitted activities including compensatory mitigation actions. Wetland rating categories shall not change due to illegal modifications.

d. Function Assessment. When an assessment of wetland functions is determined to be necessary, such as when a buffer requirement or a wetland class is questioned, the applicant must provide an assessment conducted by a qualified professional. The Washington State Function

Assessment Method is the preferred method. In all cases, a description of type and degree of wetland functions shall be provided by a qualified professional along with the rationale for all conclusions.

(4) Wetland buffers

a. Standard buffer widths. The standard buffer widths presume the existence of a relatively intact native vegetation community in the buffer zone adequate to protect the wetland functions and values at the time of the proposed activity. If the vegetation is inadequate, then the buffer width shall be increased or the buffer shall be planted to maintain the standard width. Required standard wetland buffers, based on wetland category and land use intensity, are as follows:

i. Category I

High intensity	300 feet
Moderate intensity	250 feet
Low intensity	200 feet

ii. Category II

High intensity	200 feet
Moderate intensity	150 feet
Low intensity	100 feet

iii. Category III

High intensity	100 feet
Moderate intensity	75 feet
Low intensity	50 feet

iv. Category IV

High intensity	50 feet
Moderate intensity	35 feet

Low intensity 25 feet

b. Measurement of wetland buffers. All buffers shall be measured from the wetland boundary as surveyed in the field. The width of the wetland buffer shall be determined according to the wetland category and the proposed land use. The buffer for a wetland created, restored, or enhanced as compensation for approved wetland alterations shall be the same as the buffer required for the category of the created, restored, or enhanced wetland.

c. Increased wetland buffer widths. EFSEC may require increased buffer widths in accordance with the recommendations of a qualified professional biologist and the best available science on a case-by-case basis when a larger buffer is necessary to protect wetland functions and values based on site-specific characteristics. This determination shall be based on one or more of the following criteria:

   i. If the wetland buffer falls within the area of an existing buffer required for another critical area, the larger sized buffer will be required.

   ii. The buffer or adjacent uplands has a slope greater than fifteen percent (15%) or is susceptible to erosion and standard erosion-control measures will not prevent adverse impacts to the wetland; or

   iii. The buffer area has minimal vegetative cover. In lieu of increasing the buffer width where existing buffer vegetation is inadequate to project the wetland functions and values, implementation of a buffer planting plan may substitute. Where a buffer planting plan is proposed, it shall include provisions for monitoring and maintenance to ensure success.

d. Reduction of wetland buffer widths

i. EFSEC may allow the standard wetland buffer width to be reduced in accordance with an approved critical area report and the best available science on a case-by-case basis when it is determined that a smaller area is adequate to protect the wetland functions and values based on site-specific characteristics.

ii. This determination shall be supported by documentation showing that a reduced buffer is adequate based on all of the following criteria:

1. The critical area report provides a sound rationale for a reduced buffer based on the best available science;
2. The existing buffer area is well-vegetated with native species and has less than ten percent (10%) slopes; and
3. No direct or indirect, short-term or long-term, adverse impacts to wetlands will result from the proposed activity.

iii. Long-term monitoring of the buffer and wetland may be required for reduced buffers. Subsequent corrective actions may be required if adverse impacts to wetlands are discovered during the monitoring period.

iv. In no case shall the standard buffer width be reduced by more than twenty-five percent (25%), or the buffer width be less than fifty (50) feet except for buffers between Category IV wetlands and low or moderate intensity land uses.

e. Wetland buffer width averaging. EFSEC may allow modification of the standard wetland buffer width in accordance with an approved critical area report and the best available science on a case-by-case basis by

averaging buffer widths. Averaging of buffer widths may only be allowed where a qualified wetlands professional demonstrates that:

i. It will not reduce wetland functions or values;

ii. The wetland contains variations in sensitivity due to existing physical characteristics or the character of the buffer varies in slope, soils, or vegetation, and the wetland would benefit from a wider buffer in places and would not be adversely impacted by a narrower buffer in other places;

iii. The total area contained in the buffer area after averaging is no less than that which would be contained within the standard buffer; and

iv. The buffer width is not reduced to less than fifty percent (50%) of the standard width or fifty (50) feet, whichever is greater, except for buffers between Category IV wetlands and low or moderate intensity land uses.

f. Buffers for mitigation shall be consistent. All mitigation sites shall have buffers consistent with the buffer requirements of this section based on the planned or predicted category of the mitigation site.

g. Buffer conditions shall be maintained. Wetland buffers shall be retained in an undisturbed condition. However, where impacts to buffers cannot be avoided and where buffer reduction and averaging are not sufficient or appropriate to offset buffer impacts, compensatory mitigation shall be provided.

h. Buffer uses. The following uses may be permitted within a wetland buffer, provided they are not prohibited by any other applicable law and they are

conducted in a manner so as to minimize impacts to the buffer and adjacent wetland:

i. Conservation and restoration activities. Conservation or restoration activities aimed at protecting the soil, water, vegetation, or wildlife;

ii. Passive recreation. Passive recreation facilities designed and in accordance with an approved critical area report, including:

1.Walkways and trails, provided that those pathways are roughly parallel to the perimeter of the wetland and are located in the outer twenty-five percent (25%) of the buffer area;

2.Wildlife viewing structures and fishing access areas, provided that these facilities and their access trails are the minimal necessary to provide access and only if they are consistent with protecting the functions and values of the wetland.

iii. Stormwater management facilities. Stormwater management facilities, limited to stormwater dispersion trenches and bioswales, may be allowed within the outer twenty-five percent (25%) of the buffer of Category III or IV wetlands only, provided that:

1.No other location is feasible, and

2.The location of such facilities will not degrade the functions or values of the wetland.

(5) Stormwater management facilities are not allowed in buffers of Category I or II wetlands.

(6) Signs and fencing of wetlands.

a. Temporary markers. The outer perimeter of the wetland or buffer and the limits of those areas to be disturbed pursuant to an approved permit or authorization shall be marked in the field in such a way as to ensure that

no unauthorized intrusion will occur. This temporary marking shall be maintained throughout construction, and shall not be removed until permanent signs, if required, are in place.

b. Permanent signs. Applicants may be required to install permanent signs along the boundary of a wetland or buffer.

c. Permanent signs shall be made of a metal face and attached to a metal post, or another material of equal durability. Signs must be posted at an interval of one per lot or every fifty (50) feet, whichever is less, and must be maintained by the property owner in perpetuity. The sign shall be worded as follows or with alternative language approved by EFSEC:

"Protected Wetland Area"

Do Not Disturb

Contact [Local Jurisdiction]

Regarding Uses and Restriction"

d. Fencing

e. EFSEC may condition any permit or authorization issued pursuant to this Chapter to require the applicant to install a permanent fence at the edge of the wetland buffer, when fencing will prevent future impacts to the wetland.

f. The applicant shall be required to install a permanent fence around the wetland or buffer when domestic grazing animals are present or may be introduced on site.

g. Fencing installed as part of a proposed activity or as required in this Subsection shall be design so as to not interfere with species migration, including fish runs, and shall be constructed in a manner that minimizes impacts to the wetland and associated habitat.

(7) Compensatory mitigation requirements.

a. Mitigation shall achieve equivalent or greater functions. Compensatory mitigation for alterations to wetlands shall be required for all unavoidable impacts that remain after mitigation sequencing has been applied. Compensatory mitigation actions shall achieve equivalent or greater functions. Mitigation plans shall be consistent with the Department of Ecology *Guidelines for Developing Freshwater Wetlands Mitigation Plans and Proposals*, 1994, as revised.

b. Preference of compensatory mitigation actions. Mitigation actions that require compensation shall occur in the following order of preference:

i. Restoring wetlands on upland sites that were formerly wetlands.

ii. Creating wetlands on disturbed upland sites such as those with vegetative cover consisting primarily of exotic introduced species.

iii. Enhancing significantly degraded wetlands.

iv. Preserving high-quality wetlands that are under imminent threat.

c. Compensation for wetland area. Wetland mitigation actions shall not result in a net loss of wetland area except when the following criteria are met:

i. The lost wetland area provides minimal functions and the mitigation action(s) will clearly result in a net gain in wetland functions as determined by a site-specific function assessment; or

ii. The lost wetland area provides minimal functions as determined by a site-specific function assessment and other replacement habitats provide greater benefits to the functioning of the sub-basin, such as riparian habitat restoration.

d. Compensation for wetland functions Mitigation actions shall address functions affected by the alteration to achieve equal or greater hydrologic and biological functions, and shall provide similar wetland functions as those lost, except when:

    i. The lost wetland provides minimal functions as determined by a site-specific function assessment and the proposed mitigation action(s) will provide functions shown to be limiting within a watershed through a formal watershed assessment plan or protocol; or

    ii. Out-of-kind replacement will best meet formally identified regional goals, such as replacement of historically diminished wetland types.

e. Preference for Location of mitigation. Mitigation actions shall be conducted in an appropriate location to adequately replace lost functions as determined above. The following sequence of steps should be undertaken to determine if a location will have a high likelihood of success due to an adequate source of water, ability to control invasive species, appropriate adjacent land uses and development pressures, adequate buffers, connectivity to other habitats and other relevant factors.

    i. An evaluation of on-site opportunities;

    ii. An evaluation of opportunities within the same sub-basin or Watershed Assessment Unit;

    iii. An evaluation of opportunities within the same Water Resource Inventory Area (WRIA)

    iv. Mitigation actions shall not be located outside of the same WRIA unless

1. Regional or watershed goals for water quality, flood or conveyance, habitat or other wetland functions have been formally established and strongly justify location of mitigation at another site; or
2. Credits from a state certified wetland mitigation bank are used as mitigation and the use of credits is consistent with the terms of the bank's certification.

f. Mitigation timing. Where feasible, mitigation projects shall be initiated prior to activities that will disturb wetlands. In all other cases, mitigation shall be initiated concurrently with, or immediately following, disturbance and prior to use or occupancy of the activity or development.

Construction of mitigation projects shall be timed to reduce impacts to existing wildlife and flora.

EFSEC may authorize a one-time temporary delay, up to one-hundred-eighty (180) days, in completing minor construction and landscaping when environmental conditions could produce a high probability of failure or significant construction difficulties. The delay shall not create or perpetuate hazardous conditions or environmental damage or degradation, and the delay shall not be injurious to the health, safety and general welfare of the public. The request for the temporary delay must include a written justification that documents the environmental constraints that preclude implementation of the mitigation plan.

(8) Mitigation ratios.

a. Acreage replacement ratios. The following ratios shall apply to creation or restoration that is in-kind, on-site, the same category, timed prior to or concurrent with alteration, and has a high probability of success. These

ratios do not apply to remedial actions resulting from unauthorized alterations; greater ratios shall apply in those cases. These ratios do not apply to the use of credits from an approved wetland mitigation bank. When credits from an approved bank are used, replacement ratios should be consistent with the requirements of the banking instrument. Mitigation ratios are set recognizing three factors. These are that there is generally high risk that a wetland mitigation project will fail, that it takes several years for an enhanced or created wetland to achieve full functions and that there are always going to be tradeoffs between acreage, and functions of existing wetlands and created or enhanced wetlands. The first number specifies the acreage of replacement wetlands and the second specifies the acreage of wetlands altered

Category I	6-to-1
Category II	3-to-1
Category III	2-to-1
Category IV	1.5-to-1

b. Increased replacement ratio. The ratios may be increased under the following circumstances:

   i. Uncertainty exists as to the probable success of the proposed restoration or creation; or

   ii. A significant period of time will elapse between impact and establishment of wetland functions at the mitigation site; or

   iii. Proposed mitigation will result in a lower category wetland or reduced functions relative to the wetland being impacted; or

   iv. The impact was an unauthorized impact.

c. Decreased replacement ratio. The ratios may be decreased under the following circumstances:

i. Documentation by a qualified wetlands specialist demonstrates that the proposed mitigation actions have a very high likelihood of success;

ii. Documentation by a qualified wetlands specialist demonstrates that the proposed mitigation actions will provide functions and values that are significantly greater than the wetland being impacted; or

iii. The proposed mitigation actions are conducted in advance of the impact and have been shown to be successful.

(9) Wetlands enhancement as mitigation.

a. Impacts to wetlands may be mitigated by enhancement of existing significantly degraded wetlands. Applicants proposing to enhance wetlands must produce a critical area report that identifies how enhancement will increase the functions of the degraded wetland and how this increase will adequately mitigate for the loss of wetland area and function at the impact site. An enhancement proposal must also show whether existing wetland functions will be reduced by the enhancement actions.

b. At a minimum, enhancement acreage shall be double the acreage required for creation or restoration under Subsection 8. Mitigation Ratios. The result of the enhancement mitigation must result in wetlands of equal or greater value to the sum of the values of the wetland that is being impacted and the wetland that is being enhanced. The result may be that mitigation ratios that are greater than double the required acreage where the enhancement proposal would result in minimal gain in the

performance of wetland functions and/or result in the reduction of other wetland functions currently being provided in the wetland.

(10) Wetland preservation as mitigation. Impacts to wetlands may be mitigated by preservation of wetland areas, protected in a separate tract or easement, when used in combination with other forms of mitigation such as creation, restoration, or enhancement at the preservation site or at a separate location. The result of doing preservation as mitigation must result in wetlands of equal or greater value to the sum of the values of the wetland that is being impacted and the wetland that is being preserved. The result may be that mitigation ratios must be increased to accomplish the necessary mitigation. Preservation may also be used by itself, but more restrictions, as outlined below, will apply.

a. Preservation in combination with other forms of compensation. Preservation as mitigation is acceptable when done in combination with restoration, creation, or enhancement providing that a minimum of 1-to-1 acreage replacement is provided by restoration or creation and the criteria below are met.

i. The impact area is small, and/or impacts are to a Category III or IV wetland;

ii. Preservation of a high quality system occurs in the same Water Resource Inventory Area (WRIA) or watershed basin as the wetland impact;

iii. Preservation sites include buffer areas adequate to protect the habitat and its functions from encroachment and degradation; and

iv. Mitigation ratios for preservation in combination with other forms of mitigation shall range from 10-to-1 to 20-to-1, as determined by

EFSEC depending on the quality of the wetlands being mitigated and the quality of the wetlands being preserved.

b. Preservation as the sole means of mitigation for wetland impacts. Preservation of at-risk, high-quality habitat may be considered as the sole means of mitigation for wetland impacts when all of the following criteria are met:

   i. Preservation is used as a form of mitigation only after the standard sequencing of mitigation (avoid, minimize, and then compensate) has been applied;

   ii. Creation, restoration, and enhancement opportunities have also been considered, and preservation is the best mitigation option;

   iii. The impact area is small and/or impacts are to a Category III or IV wetland;

   iv. Preservation of a high quality system occurs in the same Water Resource Inventory Area (WRIA) or a watershed where the wetland impact occurs;

   v. Preservation sites include buffer areas adequate to protect the habitat and its functions from encroachment and degradation;

   vi. The preservation site is determined to be under imminent threat, specifically, sites with the potential to experience a high rate of undesirable ecological change due to on- or off-site activities. ("Potential" includes permitted, planned, or likely actions that are not adequately protected under existing regulations [for example, logging of forested wetlands]); and

vii. The area proposed for preservation is of high quality and critical for the health of the watershed or basin. Some of the following features may be indicative of high quality sites:

1. Category I or II wetland rating;
2. Rare wetland type (for example, bogs, mature forested wetlands, estuaries);
3. Habitat for threatened or endangered species;
4. Wetland type that is rare in the area;
5. Provides biological and/or hydrological connectivity;
6. High regional or watershed importance (for example, listed as priority site in watershed plan); and
7. Large size with high species diversity (plants and/or animals) and/or high abundance.

viii. Mitigation ratios for preservation as the sole means of mitigation. Mitigation ratios for preservation as the sole means of mitigation shall be 20-to-1.

(11) Wetland mitigation banks.

a. Credits from a wetland mitigation bank may be approved for use as compensation for unavoidable impacts to wetlands when:

i. The bank is approved by the Department of Ecology;

ii. It is determined that the wetland mitigation bank provides appropriate compensation for the authorized impacts; and

iii. The proposed use of credits is consistent with the terms and conditions of the bank's certification.

b. Replacement ratios for projects using bank credits shall be consistent with replacement ratios specified in the bank's certification.

c. Credits from a certified wetland mitigation bank may be used to compensate for impacts located within the service area specified in the bank's certification. In some cases, bank service areas may include portions of more than one Water Resource Inventory Area (WRIA) for specific wetland functions.